

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Claims 20-38 are currently pending in the application. Claims 32 and 37 have been amended. No new matter has been added by the amendments. No claims have been added. No claims have been cancelled. Therefore, claims 20-38 are present for examination. Claims 20, 36, and 37 are independent claims.

Prior to entry of this amendment, the application included claims 20-38. A non-final office action mailed March 24, 2008, objected to claims 32 and 37 because of informalities, specifically claim 32 referred to claim 30 instead of claim 31; and claim 37 contained a typographical error. Claims 20-25, 28-31, 33, and 36-38 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publ. No. 2006/0189384 A1 to Crawford, III et al. (“**Crawford**”). Claims 26-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Crawford, as applied to claims 20-25, 28-31, 33, and 36-38 above, in view of U.S. Publ. No. 2202/0173353 A1 to Thomas (“**Thomas**”). Claim 32 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Crawford, as applied to claims 20-25, 28-31, 33, and 36-38 above. Official Notice is taken that payment units include electronic funds transfer machines, notes readers, and secure cash boxes, as was well known in the art. Claims 34-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Crawford, as applied to claims 20-25, 28-31, 33, and 36-38 above, in view of Applicant’s Admitted Prior Art (“**AAPA**”).

### **Claim Objections**

Claims 32 and 37 have been objected to because of informalities, specifically claim 32 referred to claim 30 instead of claim 31; and claim 37 contained a typographical error. Claims 32 and 37 has been amended and the objection is now moot.

### **Claim Rejection Under 35 U.S.C. 102**

Claims 20-25, 28-31, 33, and 36-38 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publ. No. 2006/0189384 A1 to Crawford, III et al. (“**Crawford**”).

Applicants respectfully request reconsideration of the rejection because the Examiner has failed to show a *prima facie* case of anticipation. Indeed, “for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly.” *See MPEP* §706.02, Original Eighth Edition, August, 2001, Latest Revision September 2007. And, Crawford simply does not teach each and every aspect of the claims.

Claim 20:

First, it should be noted that the present application is a National Stage Entry of a PCT Application. The National Stage Entry is afforded the filing date of the PCT filing. The PCT application was filed June 21, 2004. In the present Office Action, the Examiner rejects independent claim 20, under 35 U.S.C. § 102(e), as being anticipated by Crawford. *See Office Action*, pp. 2-3. However, as will be shown, Crawford is not prior art.

Crawford has a filing date May 2, 2006. This filing date is later than the filing date of the present application. However, Crawford claims priority to two other related U.S. Applications. Notably, Crawford is a continuation of U.S. Application No. 10/939,722, which was filed on September 13, 2004. Again, the filing date of the parent application is after the filing date of the present application.

Crawford further claims priority to provisional U.S. Application No. 60/481,555, which was filed on October 24, 2003. The filing date of the provisional application is before the filing date of the present application. However, for Crawford to be considered prior art, any material relied upon by the Examiner must have been disclosed in the provision application. Unfortunately, much of the material relied upon in Crawford is not contained in the provisional application.

Examiner rejects claim 20 by citing paragraphs [0059], [0084], [0089], and [0099] of Crawford. None of these paragraphs are in the provisional applications. Indeed, the provisional application only has 45 paragraphs. Obviously, a great deal of description in Crawford was added in the later filing. The provisional filing actually describes the playing cards being presented to a player face up. *See U.S. Application No. 60/481,555*, ¶ [0032]. This description is very different than the description in the later filed Crawford application. As such,

the material relieve upon by the Examiner cannot be afforded the earlier filing date and is not prior art.

Applicants respectfully request the Examiner withdraw this rejection and allow claim 20.

Claims 21-35:

Claims 21-35 all depend from allowable independent claim 20. Thus, claims 21-35 are all allowable over the cited prior art due, at least, to this dependence.

Claims 36 and 37:

As noted by the Examiner, independent claims 36 and 37 include similar claim elements as claim 20. See Office Action, p. 5. Thus, for reasons similar to those mentioned with regard to claim 20 (that Crawford is not prior art), claims 36 and 37 are also allowable over the cited prior art.

Claim 38:

Claim 38 depends from allowable independent claim 37. Thus, claim 38 is allowable over the cited prior art due, at least, to this dependence.

**Official Notice**

Official Notice is taken that payment units include electronic funds transfer machines, notes readers, and secure cash boxes, as was well known in the art. Applicants object to the taking of Official Notice. It is improper to use Official Notice as the only means of stating a rejection. The MPEP § 2144.03 clearly states:

*It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for*

conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. MPEP § 2144.03 (*emphasis added*)

The Examiner has only used Official Notice to reject claim 32. Thus, the rejection fails the substantial evidence test.

Further, the elements of claim 32 are believed not to be commonly known as components of a card gaming system. Indeed, to state the payment units are known is to ignore the novelty of incorporating the payment units into the virtual card system. Applicants respectfully request the Examiner to provide some evidentiary proof of the elements of claim 32 as being well known and allow the Applicants to respond to both the art and the motivation to combine the art.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. Applicants do not acquiesce to any argument not specifically addressed herein. Rather, applicants believe the amendments and arguments presented herein overcome all rejections and arguments.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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Attachments

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